

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

RECEIVED
SEP 30 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 309(j) and)
337 of the Communications Act of 1934)
as Amended)

Promotion of Spectrum Efficient Technologies)
on Certain Part 90 Frequencies)

Establishment of Public Service Radio Pool)
in the Private Mobile Frequencies Below)
800 MHz)

WT Docket No. 99-87

REPLY COMMENTS OF
UNION ELECTRIC COMPANY
d/b/a AMEREN UE
AND
CENTRAL ILLINOIS PUBLIC SERVICE COMPANY
d/b/a AMEREN CIPS

By:

Shirley S. Fujimoto
Kirk S. Burgee
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000

Attorneys for Union Electric
Company d/b/a Ameren UE and
Central Illinois Public Service
Company d/b/a Ameren CIPS

Dated: September 30, 1999

No. of Copies rec'd 044
List ABCDE

TABLE OF CONTENTS

EXECUTIVE SUMMARY	i
INTRODUCTION	1
DISCUSSION	2
I. OBLIGATION TO AVOID MUTUAL EXCLUSIVITY	2
II. THE SCOPE OF THE PUBLIC SAFETY RADIO SERVICES EXEMPTION.....	4
A. Coverage of Utilities	4
B. Communications Covered.....	4
C. Coverage of Non-Profit Cost Sharing Operations.....	5
III. THE BAND MANAGER CONCEPT.....	5
CONCLUSION	6

EXECUTIVE SUMMARY

There was an unusual level of unanimity in the comments filed in this proceeding with regard to opposing the FCC's use of auctions to issue licenses in the private radio services. On the preliminary issue of establishing mutual exclusivity, many commenters agreed with Union Electric Company d/b/a Ameren UE and Central Illinois Public Service Company d/b/a Ameren CIPS that there would be no net advantage over the existing system, which has worked well to establish a high level of efficiency in spectrum use.

There was no serious dispute in the comments that power utilities such as Union Electric Company d/b/a Ameren UE and Central Illinois Public Service Company d/b/a Ameren CIPS would fall within the public safety radio services exemption in the event that the FCC were to employ auctions. Additionally, the commenters properly pointed out the impracticality of segregating particular communications by exempt entities and supported the notion that the exemption should apply to all communications of an exempt entity. Despite the proposal set forth by certain commenters, there is no basis to exclude non-profit cost shared operations from the exemption based on the fact that those systems may be interconnected. There was otherwise significant support for including non-profit cost shared operations within the exemption. Finally, the comments failed to address the intrinsic problems associated with the FCC's band manager concept and, consequently, that concept should be abandoned by the FCC.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Implementation of Sections 309(j) and)	WT Docket No. 99-87
337 of the Communications Act of 1934)	
as Amended)	
)	
Promotion of Spectrum Efficient Technologies)	
on Certain Part 90 Frequencies)	
)	
Establishment of Public Service Radio Pool)	
in the Private Mobile Frequencies Below)	
800 MHz)	

REPLY COMMENTS OF UNION AND CIPS SERVICES, INC.

Pursuant to § 1.415¹ of the rules of the Federal Communications Commission (“Commission” or “FCC”), Union Electric Company d/b/a Ameren UE (“Union”) and Central Illinois Public Service Company d/b/a Ameren CIPS (“CIPS”), hereby submit Reply Comments in response to the Comments filed in the above-captioned proceeding.²

INTRODUCTION

Union and CIPS note that the overwhelming majority of commenters in this proceeding oppose the institution of auctions in the private land mobile services, as Union

¹ 47 C.F.R. § 1.415.

² *In the Matter of Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz*, WT Docket No. 99-87, *Notice of Proposed Rule Making* (Released March 25, 1999) (the “NPRM”).

and CIPS did. Furthermore, Union and CIPS submit that there was no disagreement with regard to Union and CIPS's position on the scope of the "public safety radio services" exemption and little dispute on their views concerning the "band manager" concept and the commercialization of private spectrum. Union and CIPS submit that the near unanimity in the voluminous comments in this proceeding is a compelling indication that a new licensing scheme in the private services is not appropriate. Union and CIPS therefore continue to urge the FCC not to institute auctions in the private services, not to establish band managers, nor in any way restrict the eligibility of otherwise exempt non-profit cost sharing operations.

DISCUSSION

I. OBLIGATION TO AVOID MUTUAL EXCLUSIVITY

In their comments in this proceeding, Union and CIPS argued that the FCC may not establish mutual exclusivity in licensing unless it would be in the public interest to do so. It is Union and CIPS's position that, for this purpose, the "public interest" is to be construed broadly, rather than in terms of the limited categories established in Section 309(j)(6)(E). Union and CIPS agree with those commenters that contend that the FCC's *initial* obligation is to avoid mutual exclusivity in the public interest and, if it cannot do so, then seek the public interest objectives set forth in Section 309(j)(6)(E).³

The comments overwhelmingly opposed auctions and generally were consistent with Union and CIPS's fundamental position concerning the establishment of mutual

³ Comments of the Land Mobile Communications Council (LMCC) at 5, The Private Internal Radio Service Coalition (PIRC) at 7 and the Personal Communications Industry Association (PCIA) at 4.

exclusivity, the predicate for the FCC's auction authority, in the private radio services. Specifically, the commenters addressing the issue largely agree that establishing mutual exclusivity would run counter to the public interest, which the FCC must attempt to further in its allocation of spectrum. For example, LMCC noted in its comments that the current licensing scheme has worked well to establish a high level of efficiency in spectrum use in the private services.⁴ The American Petroleum Institute (API), CellNet Data Systems, Inc. (CellNet), Forest Industries Telecommunications, ITA and the North Texas Communications Council and others expressed similar positions in their comments.⁵ Union and CIPS support these comments and urge the FCC to recognize that the benefits of the current licensing system in the private radio services militate against the implementation of a mutually exclusive licensing scheme.

Union and CIPS submit that the comments of Nextel do not address the critical issue of the FCC's obligation to avoid mutual exclusivity. In arguing for the broad use of auctions as a licensing mechanism, Nextel concludes that Section 309(j) "requires the FCC to assign all non-public safety licenses...via auction."⁶ Nextel's position is incorrect and overlooks Congress's clear mandate, specifically emphasized in the 1997 Budget Act, to avoid mutual exclusivity. The FCC's auction authority is limited by *both* the obligation to avoid mutual exclusivity and by the public safety radio services exemption.

⁴ Comments of LMCC at 4.

⁵ Comments of API at 12, CellNet at 6, Forest Industries Telecommunications at 5, ITA *et al.* at 16, North Texas Communications Council at 3.

⁶ Comments of Nextel at 3.

II. THE SCOPE OF THE PUBLIC SAFETY RADIO SERVICES EXEMPTION

A. Coverage of Utilities

Union and CIPS note that there was no serious dispute in the comments that power utilities fall within the intended scope of the public safety radio services exemption, with the possible exception of Nextel's comments, which used the somewhat ambiguous term "public safety services" in connection with the exemption.⁷ Union and CIPS submit that the legislative history of the 1997 Budget Act makes plain Congress's intention with regard to utilities and Union and CIPS urge the FCC to include utilities within the exemption, should the FCC determine to auction spectrum that they occupy.

B. Communications Covered

Union and CIPS agree with those commenters that recognized the impracticality of not applying the public safety radio service exemption to all communications of these licensees. The Critical Infrastructure Industries (CII) and LMCC, for example, correctly point out that much, if not all, of the activities supported by utility radio systems impact upon the safe operation of their infrastructure, directly or indirectly.⁸ Furthermore, as Central and South West Corporation (CSW) and Minnesota Power, Inc. point out, it would be impractical to segregate on an otherwise exempt network communications that may not be directly or immediately related to safety.⁹ The FCC should extend the public safety radio services exemption generally to licensees that meet the criteria, rather than to certain communications.

⁷ Comments of Nextel at 2.

⁸ Comments of CII at 13 and LMCC at 6.

⁹ Comments of CSW at 2 and Minnesota Power, Inc. at 2-3.

C. Coverage of Non-Profit Cost Sharing Operations

Union and CIPS agree with the numerous commenters that support the inclusion of non-profit cost sharing operations within the public safety radio services exemption.¹⁰

Union and CIPS take issue, however, with the proposal set forth by certain commenters that the public safety radio services exemption should apply only to systems that are not interconnected.¹¹ There is, Union and CIPS submit, no logical reason to exclude otherwise exempt non-profit shared systems on the basis of interconnection, which is frequently a critical aspect of utility, and thus public safety radio service communications.

Interconnected operations do not constitute commercial operations and the public safety radio service exemption should apply equally to entities that operate exclusive systems and those that engage in non-profit sharing.

III. THE BAND MANAGER CONCEPT

A number of entities included discussions of the “band manager” concept in their comments. For the reasons set forth in their original comments, Union and CIPS continue to oppose the introduction of this concept to the private radio services. The proposals of the commenting parties notwithstanding, the band manager concept would inevitably cede improper authority to parties with interests that necessarily conflict with those of incumbent licensees. There is, Union and CIPS submit, no way to implement the concept without this fundamental problem and, as such, the FCC should abandon it.

¹⁰ Comments of American Electric Power Service Corporation at 3, American Mobile Telephone Association at 8, American Water Works Association at 7, Arizona Public Service Company at 3, CII at 16-17, ITA *et al.* at 10, LMCC at 8, USMSS at 10 and UTC at 14.

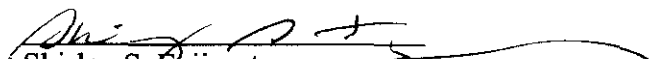
¹¹ Comments of ITA *et al.* at 15 and The USMSS, Inc at 10.

CONCLUSION

The overwhelming opposition to auctions in the comments to this proceeding demonstrates the extent to which auctions are ill suited to the private radio services. In the Balanced Budget Act of 1997, Congress made clear that auctions should not be automatically implemented in response to the FCC's modified auction authority. The comments have demonstrated that the private radio services operate with a high degree of spectrum efficiency under the current framework. Based on the unique characteristics of operations in those services, the institution of auctions and/or band managers, or any restriction on non-profit, cost sharing operations would have significant adverse consequences without yielding any appreciable benefits.

WHEREFORE, THE PREMISES CONSIDERED, Union Electric Company d/b/a Ameren UE and Central Illinois Public Service Company d/b/a Ameren CIPS respectfully ask the Commission to act in the public interest in accordance with the proposals set forth herein.

Respectfully submitted,


Shirley S. Fujimoto
Kirk S. Burgee
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005

Attorneys for Union Electric
Company d/b/a Ameren UE and
Central Illinois Public Service
Company d/b/a Ameren CIPS

Dated: September 30, 1999

CERTIFICATE OF SERVICE

I, Christine S. Bisio, do hereby certify that on this 30th day of September 1999, a copy of the foregoing "Reply Comments of Union Electric Company d/b/a Ameren UE and Central Illinois Public Service Company d/b/a Ameren CIPS" was hand-delivered to each of the following:

Magalie R. Salas (Original and 4 Copies)
Secretary
Federal Communications Commission
445 Twelfth Street, S.W., TW-A325
Washington, DC 20554

Gary D. Michaels
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

William E. Kennard, Chairman
Federal Communications Commission
445 12th Street, S.W., Room 8-B201H
Washington, D.C. 20554

Ramona Melson
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Michael Powell, Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A204C
Washington, D.C. 20554

Thomas J. Sugrue
Chief
Wireless Telecommunications Bureau
Federal Communications Commission
Room 3-C207
Washington, D.C. 20554

Harold Furchtgott-Roth, Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-A302C
Washington, D.C. 20554

Kris Monteith
Chief Policy Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Susan Ness, Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-B115H
Washington, D.C. 20554

Robert S. Foosaner **
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

Gloria Tristani, Commissioner
Federal Communications Commission
445 12th Street, S.W., Room 8-C302C
Washington, D.C. 20554

** Via U.S. Mail

International Transcription Service
445 12th Street, S.W.
Room CY-B400
Washington, D.C. 20554

By: Christine S. Bisio
Christine S. Bisio